

claim proven, the Secretary concerned or the claimant may request reconsideration (the procedures are explained at appendix E to this part). The Director's decision is a final action if the Director does not receive a request for reconsideration within 30 days of the date of the Director's decision (plus any extension of up to 30 additional days granted by the Director for good cause shown).

#### APPENDIX E TO PART 282—APPEALS

(a) *Who May Appeal.* A claimant may appeal if an initial determination denies all or part of a claim or finds that the claim was not received by the Component concerned within the time limit required by statute; however, the decision of the Secretary concerned not to request or recommend waiver of the time limit is not appealable except to the Secretary concerned, if the Secretary as a matter of discretion provides for such appeals.

(b) *When and Where to Submit an Appeal.* A claimant's appeal must be received by the Component concerned within 30 days of the date of the initial determination. The Component may extend this period for up to an additional 30 days for good cause shown. No appeal may be accepted after this time has expired. An appeal sent directly to the DOHA is not properly submitted.

(c) *Content of an Appeal.* No specific format is required; however, the appeal must be written and be signed by the claimant, the claimant's authorized agent, or the claimant's attorney. It also should:

- (1) Provide the claimant's mailing address;
- (2) Provide the claimant's telephone number;
- (3) State the amount claimed on appeal, or that the appeal is from a finding of untimely receipt, whichever applies;
- (4) Identify specific:
  - (i) Errors or omissions of material and relevant fact;
  - (ii) Legal considerations that were overlooked or misapplied; and
  - (iii) Conclusions that were arbitrary, capricious, or an abuse of discretion;
- (5) Present evidence of the correct or additional facts alleged;
- (6) Explain the reasons the findings or conclusions should be reversed or modified;
- (7) Have attached copies of documents referred to in the appeal; and
- (8) Include or have attached statements (that are attested to be true and correct to the best of the individual's knowledge and belief) by the claimant or other persons in support of the appeal.

(d) *Component's Review.* The Component concerned must review a claimant's appeal, and affirm, modify, or reverse the initial determination.

- (1) If the appeal concerns the denial of all or part of the claim and the Component

grants the entire claim, or grants the claim to the extent requested in the appeal, the Component must notify the claimant in writing and explain the action the Component shall take on the claim. This is a final action.

(2) If the appeal concerns the untimely receipt of the claim and the Component determines that the claim was received within the time limit required by statute, the Component must notify the claimant in writing and process the claim on the merits.

(3) In all other cases, the Component must forward the appeal to the DOHA in accordance with paragraph (e) of this appendix. If the appeal concerns an initial determination of untimely receipt, the Component should not investigate, or issue an initial determination concerning, the merits of the claim before forwarding the appeal. The Component must prepare a recommendation and administrative report (as explained in paragraph (f) of this appendix). The Component must send a copy of the administrative report to the claimant, with a notice that the claimant may submit a rebuttal to the Component (as explained in paragraph (g) of this appendix).

(e) *Submission of Appeal to DOHA.* No earlier than 31 days after the date of the administrative report, or the day after the claimant's rebuttal period, as extended, expires, the Component must send the entire record along with the recommendation and the administrative report required by paragraph (f) of this appendix to the following address: Defense Office of Hearings and Appeals, Claims Division, P.O. Box 3656, Arlington, Virginia 22203-1995.

The record sent to the DOHA shall include specific identification of any major policy issue(s) and a statement as to whether the amount in controversy exceeds \$100,000 either in the instant claim or in the aggregate for directly related claims. If the amount in controversy exceeds \$100,000, a full description of the financial impact shall be provided.

(f) *Recommendation and Administrative Report.* The recommendation and administrative report required by paragraph (d) of this appendix must include the following:

- (1) The name of the claimant;
- (2) The Component's file reference number;
- (3) The Component's recommendation (and the reasons for it) for the disposition of the claim;
- (4) Relevant and material documents (such as correspondence, business records, and witness statements), as attachments; and
- (5) Complete copies of regulations, instructions, memorandums of understanding, tariffs and/or tenders, solicitations, contracts, or rules cited by the claimant or the Component, if a copy has not been previously provided, or is not available readily via electronic means.

(g) *Claimant's Rebuttal.* A claimant may submit a written rebuttal, signed by the claimant or the claimant's agent or attorney, in response to the recommendation and administrative report. The rebuttal must be submitted to the Component within 30 days of the date of the recommendation and administrative report. The Component may grant an extension of up to an additional 30 days for good cause shown. The rebuttal should include:

- (1) An explanation of the points and reasons for disagreeing with the report;
- (2) The Component's file reference number;
- (3) Any documents referred to in the rebuttal; and
- (4) Statements (that are attested to be true and correct to the best of the individual's knowledge and belief) by the claimant or other persons in support of the rebuttal.

(h) *Action by the Component.* The Component must:

- (1) Date stamp the claimant's rebuttal on the date it is received;
- (2) Send the entire record to the DOHA, but no earlier than 31 days after the date of the report, or the day after the claimant's rebuttal period, as extended, expires (as explained in paragraph (e) of this appendix).

(i) *DOHA Appeal Decision.* Except as provided in paragraph (p) of this appendix, the DOHA must base its decision on the written record, including the recommendation and administrative report and any rebuttal by the claimant. The DOHA shall coordinate its decision in advance with the GC, DoD when the appeal decision affects:

- (1) Major policy issues;
- (2) Involves a claim that is quasi-contractual in nature and arises from the activity of a DoD Component, but the claim was not settled under usual acquisition procedures; or

(3) When the amounts in controversy exceed \$100,000, either for the instant claim or in the aggregate for directly related claims. The written decision must:

(i) Affirm, modify, reverse, or remand the Component's determination (and, if the issue is untimely receipt and there is a finding that the claim was timely received, may either consider and decide the claim on the merits or return the claim to the Component concerned for investigation and initial determination on the merits);

(ii) State the amount of the claim that is granted and the amount that is denied and/or state that the claim was or was not received within the statutory time limit, as appropriate; and

(iii) Explain the reasons for the decision.

(j) *Processing After the Appeal Decision.* After issuing an appeal decision, the DOHA must:

- (1) Send the claimant the decision and notify the claimant of:

(i) The appropriate Component action on the claim as a consequence of the decision, if it is or becomes a final action (as explained in paragraph (k) of this appendix); and

(ii) The procedures under this appendix to request reconsideration (as explained in paragraphs (l) through (n) of this appendix), if the decision does not grant the claim to the extent requested, or does not contain a finding of timely receipt, as the case may be.

(2) Notify the Component concerned of the decision, and of the appropriate Component action on the claim as a consequence of the decision.

(k) *Finality of a DOHA Appeal Decision.* An appeal decision that finds that the claim was timely received is a final action when issued. Otherwise, an appeal decision is a final action if the DOHA does not receive a request for reconsideration within 30 days of the date of the appeal decision (plus any extension of up to 30 additional days granted by the DOHA for good cause shown). NOTE: In the case of a DOHA appeal decision issued before the effective date of this part that denied all or part of the claim, a request for reconsideration by the GC, DoD may be submitted within 60 days of the effective date of this part. The GC, DoD shall consider such requests and affirm, modify, reverse, or remand the DOHA appeal decision. Requests for reconsideration by the GC, DoD received more than 60 days after the effective date of this part shall not be accepted. Requests must be submitted to the address in paragraph (e) of this appendix. The provisions of paragraph (n) of this appendix apply.

(l) *Who May Request Reconsideration.* A claimant or the Component concerned, or both, may request reconsideration of a DOHA appeal decision.

(m) *When and Where to Submit a Request for Reconsideration.* The DOHA must receive a request for reconsideration within 30 days of the date of the appeal decision.<sup>1</sup> The DOHA may extend this period for up to an additional 30 days for good cause shown. No request for reconsideration may be accepted after this time has expired. A request for reconsideration must be sent to the DOHA at the address in paragraph (e) of this appendix.

(n) *Content of a Request for Reconsideration.* The requirements of paragraph (c) of this appendix, concerning the contents of an appeal, apply to requests for reconsideration.

(o) *DOHA's Review of a Request for Reconsideration.* (1) No earlier than 31 days after the date of the appeal decision, or the day after

<sup>1</sup>With respect to appeal decisions issued before the effective date of this part, the request for reconsideration by the GC, DoD must be received by the DOHA within 60 days of the effective date of this part as explained in paragraph (k) of this appendix.

the last period for submitting a request, as extended, expires, the DOHA must:

(i) Consider a request or requests for reconsideration;

(ii) Affirm, modify, reverse, or remand the appeal decision (and, if the issue is untimely receipt and there is a finding that the claim was timely received, may either consider and decide the claim on the merits or return the claim to the Component concerned for investigation and initial determination on the merits);

(iii) Prepare a response that explains the reasons for the finding; and

(iv) Send the response to the claimant and the Component concerned and notify both of the appropriate action on the claim.

(2) The response is a final action. It is precedent in the consideration of all claims covered by this part unless otherwise stated in the document.

(p) *Consideration of Appeals and Requests for Reconsideration.* When considering an appeal or request for reconsideration, the DOHA may:

(1) Take administrative notice of matters that are generally known or are capable of confirmation by resort to sources whose accuracy cannot reasonably be questioned.

(2) Remand a matter to the Component with instructions to provide additional information.

#### APPENDIX F TO PART 282—REQUESTS FOR AN ADVANCE DECISION

(a) *Who May Request an Advance Decision.* A disbursing or certifying official or the Head of a Component may request an advance decision on a question involving:

(1) A payment the disbursing official or Head of the Component shall make; or

(2) A voucher presented to a certifying official for certification.

(b) *Who May Render an Advance Decision.* The following officials are authorized to render an advance decision concerning the matters indicated:

(1) The Secretary of Defense for requests involving claims under:

(i) 31 U.S.C. 3702 for Uniformed Services members' pay, allowances, travel, transportation, retired pay, and survivor benefits, and by carriers for amounts collected from them for loss or damage to property they transported at Government expense.

(ii) 31 U.S.C. 3702 that are not described in paragraph (b)(1)(i) of this appendix and that arise from the activity of a DoD Component, when there is no other settlement authority specifically provided by law.

(iii) 10 U.S.C. 2575, 10 U.S.C. 2771, 24 U.S.C. 420, 10 U.S.C. 4712, 10 U.S.C. 9712, 37 U.S.C. 554, and 32 U.S.C. 714. Appendix B to this part describes these claims.

(2) The Director of the Office of Personnel Management for requests involving claims

for civilian employees' compensation and leave.

(3) The Administrator of General Services for requests involving claims for civilian employees' travel, transportation, and relocation expenses.

(c) *Where to Submit a Request.* All requests described in paragraph (b)(1) of this appendix and all other requests arising from the activity of a DoD Component (even if addressed to an official outside the Department of Defense) must be sent through the General Counsel of the Component concerned to the following address: General Counsel, Department of Defense, 1600 Defense Pentagon, Washington, DC 20301-1600.

(d) *Content of a Request.* Requests for an advance decision must:

(1) Specifically request an advance decision pursuant to 31 U.S.C. 3529;

(2) Describe all the relevant facts;

(3) Explain the reasons (both factual and legal) the requester considers the proposed payment to be questionable;

(4) Have attached vouchers, if any, and copies of all other relevant documents relating to the proposed payment;

(5) Have attached a legal memorandum from the General Counsel of the Component concerned that discusses the legality of the proposed payment under the circumstances presented in the request; and

(6) Comply with any other requirements established by the Director of the Office of Personnel Management or the Administrator of General Services.

(e) *Advance Decisions.* The GC, DoD must take action under paragraphs (e)(1), (e)(2), or (e)(3) of this appendix, whichever applies.

(1) If the request is described in paragraph (b)(1) of this appendix, the GC, DoD must review the request and issue an advance decision, unless the GC, DoD elects to proceed under paragraph (e)(3) of this appendix.

(i) The GC, DoD must send the decision, through the General Counsel of the Component concerned, to the requester, and must send a copy of the decision to the Director, DOHA for publication according to appendix A to this part, paragraph (f).

(ii) The decision is controlling in the case; the reliance of certifying and disbursing officials on it in their disposition of the case is evidence that those officials have exercised due diligence in the performance of their duties.

(iii) An advance decision is precedent in similar claims under this part unless otherwise stated in the decision.

(2) If the request is not described in paragraph (b)(1) of this appendix, the GC, DoD must review the request and either:

(i) Forward the request to the appropriate advance decision authority and notify the requester of that action; or

(ii) Return the request, through the General Counsel of the Component concerned, to